

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 902

**Introduced by ~~Committee on Housing and Community Development~~
(~~Mendoza (Chair), Harkey (Vice Chair), De La Torre, Eng,~~
~~Fletcher, Ma, and Saldana)~~ Assembly Member Torres**

February 26, 2009

~~An act relating to taxation.~~ *An act to amend, repeal, and add Section 23153 of, and to add and repeal Sections 17053.60 and 17204 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 902, as amended, ~~Committee on Housing and Community Development Torres. Personal income tax: credits: foreclosed homes.~~ *Income tax credit: foreclosed homes: mortgage interest deduction: minimum franchise tax.*

The Personal Income Tax Law authorizes various credits against the taxes imposed by that law.

This bill would, for taxable years beginning on or after January 1, 2009, and before January 1, 2012, allow a credit in an amount, not to exceed \$3,000, that is otherwise equal to 2%, of the amount paid or incurred for the purchase as a primary residence of a foreclosed dwelling by a taxpayer whose gross income does not exceed a certain threshold.

The Personal Income Tax Law allows a deduction for any qualified residence interest.

This bill would, for taxable years beginning on or after January 1, 2010, and before January 1, 2012, allow that deduction only with respect to a qualified residence that is a principal residence, as provided.

The Personal Income Tax Law and the Corporation Tax Law impose a specified minimum tax on partnerships, limited liability companies, and corporations.

This bill would, for taxable years beginning on or after January 1, 2009, and before January 1, 2012, adjust those minimum tax amounts for inflation, as provided.

This bill would take effect immediately as a tax levy.

~~The Personal Income Tax Law authorizes various credits against the taxes imposed by that law.~~

~~This bill would state the intent of the Legislature to enact legislation authorizing a credit against those taxes for individuals who purchase a foreclosed home.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 17053.60 is added to the Revenue and*
- 2 *Taxation Code, to read:*
- 3 *17053.60. (a) For each taxable year beginning on or after*
- 4 *January 1, 2009, and before January 1, 2012, there shall be*
- 5 *allowed as a credit against the "net tax," as defined by Section*
- 6 *17039, an amount equal to 2 percent of the amount paid or*
- 7 *incurred during the taxable year by a qualified taxpayer for the*
- 8 *purchase of a qualified property.*
- 9 *(b) For purposes of this section:*
- 10 *(1) "Qualified taxpayer" means an individual whose annual*
- 11 *gross income is equal to or less than 120 percent of the area*
- 12 *median income.*
- 13 *(2) "Area median income" means area median income as*
- 14 *periodically established by the Department of Housing and*
- 15 *Community Development pursuant to Section 50093 of the Health*
- 16 *and Safety Code.*
- 17 *(3) "Qualified property" means a house or dwelling unit that*
- 18 *has been foreclosed upon and purchased by a qualified taxpayer*
- 19 *as his or her primary residence.*

1 (c) The credit under this section shall be allowed only for a
2 single purchase by the qualified taxpayer and shall not exceed
3 three thousand dollars (\$3,000).

4 (d) In the case where the credit allowed under this section
5 exceeds the “net tax,” the excess may be carried over to reduce
6 the “net tax” in the following year, and succeeding years if
7 necessary, until the credit has been exhausted.

8 (e) This section shall remain in effect only until December 1,
9 2012, and as of that date is repealed.

10 SEC. 2. Section 17204 is added to the Revenue and Taxation
11 Code, to read:

12 17204. (a) For each taxable year beginning on or after
13 January 1, 2010, and before January 1, 2012, Section 163(h)(4)
14 of the Internal Revenue Code is modified to provide that the term
15 “qualified residence” means only the principal residence (within
16 the meaning of Section 121 of that code) and shall not include any
17 other residence of the taxpayer.

18 (b) This section shall remain in effect only until December 1,
19 2012, and as of that date is repealed.

20 SEC. 3. Section 23153 of the Revenue and Taxation Code is
21 amended to read:

22 23153. (a) Every corporation described in subdivision (b) shall
23 be subject to the minimum franchise tax specified in subdivision
24 (d) from the earlier of the date of incorporation, qualification, or
25 commencing to do business within this state, until the effective
26 date of dissolution or withdrawal as provided in Section 23331 or,
27 if later, the date the corporation ceases to do business within the
28 limits of this state.

29 (b) Unless expressly exempted by this part or the California
30 Constitution, subdivision (a) shall apply to each of the following:

31 (1) Every corporation that is incorporated under the laws of this
32 state.

33 (2) Every corporation that is qualified to transact intrastate
34 business in this state pursuant to Chapter 21 (commencing with
35 Section 2100) of Division 1 of Title 1 of the Corporations Code.

36 (3) Every corporation that is doing business in this state.

37 (c) The following entities are not subject to the minimum
38 franchise tax specified in this section:

39 (1) Credit unions.

(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive taxable years, commencing with the first taxable year for which the certificate is issued pursuant to subdivision (b) of Section 54042 of the Food and Agricultural Code. This paragraph only applies to nonprofit cooperative associations organized on or after January 1, 1994.

(d) (1) Except as provided in paragraph (2), paragraph (1) of subdivision (f) of Section 23151, paragraph (1) of subdivision (f) of Section 23181, and paragraph (1) of subdivision (c) of Section 23183, corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of eight hundred dollars (\$800).

(2) The minimum franchise tax shall be twenty-five dollars (\$25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in other than mining.

(e) Notwithstanding subdivision (a), for taxable years beginning on or after January 1, 1999, and before January 1, 2000, every “qualified new corporation” shall pay annually to the state a minimum franchise tax of five hundred dollars (\$500) for the second taxable year. This subdivision shall apply to any corporation that is a qualified new corporation and is incorporated on or after January 1, 1999, and before January 1, 2000.

(1) The determination of the gross receipts of a corporation, for purposes of this subdivision, shall be made by including the gross receipts of each member of the commonly controlled group, as defined in Section 25105, of which the corporation is a member.

(2) “Gross receipts, less returns and allowances reportable to this state,” means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(3) “Qualified new corporation” means a corporation that is incorporated under the laws of this state or has qualified to transact intrastate business in this state, that begins business operations at or after the time of its incorporation and that reasonably estimates that it will have gross receipts, less returns and allowances, reportable to this state for the taxable year of one million dollars (\$1,000,000) or less. “Qualified new corporation” does not include any corporation that began business operations as a sole proprietorship, a partnership, or any other form of business entity prior to its incorporation. This subdivision shall not apply to any corporation that reorganizes solely for the purpose of reducing its minimum franchise tax.

(4) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as defined in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, financial asset securitization investment trusts, as defined in Section 860L of the Internal Revenue Code, qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, or to the formation of any subsidiary corporation, to the extent applicable.

(5) For any taxable year beginning on or after January 1, 1999, and before January 1, 2000, if a corporation has qualified to pay five hundred dollars (\$500) for the second taxable year under this subdivision, but in its second taxable year, the corporation’s gross receipts, as determined under paragraphs (1) and (2), exceed one million dollars (\$1,000,000), an additional tax in the amount equal to three hundred dollars (\$300) for the second taxable year shall be due and payable by the corporation on the due date of its return, without regard to extension, for that year.

(f) (1) Notwithstanding subdivision (a), every corporation that incorporates or qualifies to do business in this state on or after January 1, 2000, shall not be subject to the minimum franchise tax for its first taxable year.

(2) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as defined in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, financial asset securitization investment trusts, as defined in Section 860L of the Internal Revenue Code, and qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, to the extent applicable.

(3) This subdivision shall not apply to any corporation that reorganizes solely for the purpose of avoiding payment of its minimum franchise tax.

(g) Notwithstanding subdivision (a), a domestic corporation, as defined in Section 167 of the Corporations Code, that files a certificate of dissolution in the office of the Secretary of State pursuant to subdivision (c) of Section 1905 of the Corporations Code, prior to its amendment by the act amending this subdivision, and that does not thereafter do business shall not be subject to the minimum franchise tax for taxable years beginning on or after the date of that filing.

(h) The minimum franchise tax imposed by paragraph (1) of subdivision (d) shall not be increased by the Legislature by more than 10 percent during any calendar year.

(i) Notwithstanding subdivision (h) for each taxable year beginning on or after January 1, 2009, and before January 1, 2012, the Franchise Tax Board shall recompute the minimum franchise tax amounts prescribed in subdivision (d). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

1 (2) *The Franchise Tax Board shall do both of the following:*

2 (A) *Compute an inflation adjustment factor by adding 100*
3 *percent to the percentage change figure that is furnished pursuant*
4 *to paragraph (1) and dividing the result by 100.*

5 (B) *Multiply the preceding taxable year minimum franchise tax*
6 *amounts by the inflation adjustment factor determined in*
7 *subparagraph (A) and round off the resulting products to the*
8 *nearest one dollar (\$1).*

9 (j) *This section shall remain in effect only until December 1,*
10 *2012, and as of that date is repealed.*

11 SEC. 4. *Section 23153 is added to the Revenue and Taxation*
12 *Code, to read:*

13 23153. (a) *For each taxable year beginning on or after*
14 *January 1, 2012, every corporation described in subdivision (b)*
15 *shall be subject to the minimum franchise tax specified in*
16 *subdivision (d) from the earlier of the date of incorporation,*
17 *qualification, or commencing to do business within this state, until*
18 *the effective date of dissolution or withdrawal as provided in*
19 *Section 23331 or, if later, the date the corporation ceases to do*
20 *business within the limits of this state.*

21 (b) *Unless expressly exempted by this part or the California*
22 *Constitution, subdivision (a) shall apply to each of the following:*

23 (1) *Every corporation that is incorporated under the laws of*
24 *this state.*

25 (2) *Every corporation that is qualified to transact intrastate*
26 *business in this state pursuant to Chapter 21 (commencing with*
27 *Section 2100) of Division 1 of Title 1 of the Corporations Code.*

28 (3) *Every corporation that is doing business in this state.*

29 (c) *The following entities are not subject to the minimum*
30 *franchise tax specified in this section:*

31 (1) *Credit unions.*

32 (2) *Nonprofit cooperative associations organized pursuant to*
33 *Chapter 1 (commencing with Section 54001) of Division 20 of the*
34 *Food and Agricultural Code that have been issued the certificate*
35 *of the board of supervisors prepared pursuant to Section 54042*
36 *of the Food and Agricultural Code. The association shall be exempt*
37 *from the minimum franchise tax for five consecutive taxable years,*
38 *commencing with the first taxable year for which the certificate is*
39 *issued pursuant to subdivision (b) of Section 54042 of the Food*

1 *and Agricultural Code. This paragraph only applies to nonprofit*
2 *cooperative associations organized on or after January 1, 1994.*

3 *(d) (1) Except as provided in paragraph (2), paragraph (1) of*
4 *subdivision (f) of Section 23151, paragraph (1) of subdivision (f)*
5 *of Section 23181, and paragraph (1) of subdivision (c) of Section*
6 *23183, corporations subject to the minimum franchise tax shall*
7 *pay annually to the state a minimum franchise tax of eight hundred*
8 *dollars (\$800).*

9 *(2) The minimum franchise tax shall be twenty-five dollars (\$25)*
10 *for each of the following:*

11 *(A) A corporation formed under the laws of this state whose*
12 *principal business when formed was gold mining, which is inactive*
13 *and has not done business within the limits of the state since 1950.*

14 *(B) A corporation formed under the laws of this state whose*
15 *principal business when formed was quicksilver mining, which is*
16 *inactive and has not done business within the limits of the state*
17 *since 1971, or has been inactive for a period of 24 consecutive*
18 *months or more.*

19 *(3) For purposes of paragraph (2), a corporation shall not be*
20 *considered to have done business if it engages in other than mining.*

21 *(e) Notwithstanding subdivision (a), for taxable years beginning*
22 *on or after January 1, 1999, and before January 1, 2000, every*
23 *“qualified new corporation” shall pay annually to the state a*
24 *minimum franchise tax of five hundred dollars (\$500) for the*
25 *second taxable year. This subdivision shall apply to any*
26 *corporation that is a qualified new corporation and is incorporated*
27 *on or after January 1, 1999, and before January 1, 2000.*

28 *(1) The determination of the gross receipts of a corporation,*
29 *for purposes of this subdivision, shall be made by including the*
30 *gross receipts of each member of the commonly controlled group,*
31 *as defined in Section 25105, of which the corporation is a member.*

32 *(2) “Gross receipts, less returns and allowances reportable to*
33 *this state,” means the sum of the gross receipts from the production*
34 *of business income, as defined in subdivision (a) of Section 25120,*
35 *and the gross receipts from the production of nonbusiness income,*
36 *as defined in subdivision (d) of Section 25120.*

37 *(3) “Qualified new corporation” means a corporation that is*
38 *incorporated under the laws of this state or has qualified to*
39 *transact intrastate business in this state, that begins business*
40 *operations at or after the time of its incorporation and that*

1 reasonably estimates that it will have gross receipts, less returns
2 and allowances, reportable to this state for the taxable year of one
3 million dollars (\$1,000,000) or less. "Qualified new corporation"
4 does not include any corporation that began business operations
5 as a sole proprietorship, a partnership, or any other form of
6 business entity prior to its incorporation. This subdivision shall
7 not apply to any corporation that reorganizes solely for the purpose
8 of reducing its minimum franchise tax.

9 (4) This subdivision shall not apply to limited partnerships, as
10 defined in Section 17935, limited liability companies, as defined
11 in Section 17941, limited liability partnerships, as defined in
12 Section 17948, charitable organizations, as described in Section
13 23703, regulated investment companies, as defined in Section 851
14 of the Internal Revenue Code, real estate investment trusts, as
15 defined in Section 856 of the Internal Revenue Code, real estate
16 mortgage investment conduits, as defined in Section 860D of the
17 Internal Revenue Code, financial asset securitization investment
18 trusts, as defined in Section 860L of the Internal Revenue Code,
19 qualified Subchapter S subsidiaries, as defined in Section
20 1361(b)(3) of the Internal Revenue Code, or to the formation of
21 any subsidiary corporation, to the extent applicable.

22 (5) For any taxable year beginning on or after January 1, 1999,
23 and before January 1, 2000, if a corporation has qualified to pay
24 five hundred dollars (\$500) for the second taxable year under this
25 subdivision, but in its second taxable year, the corporation's gross
26 receipts, as determined under paragraphs (1) and (2), exceed one
27 million dollars (\$1,000,000), an additional tax in the amount equal
28 to three hundred dollars (\$300) for the second taxable year shall
29 be due and payable by the corporation on the due date of its return,
30 without regard to extension, for that year.

31 (f) (1) Notwithstanding subdivision (a), every corporation that
32 incorporates or qualifies to do business in this state on or after
33 January 1, 2000, shall not be subject to the minimum franchise
34 tax for its first taxable year.

35 (2) This subdivision shall not apply to limited partnerships, as
36 defined in Section 17935, limited liability companies, as defined
37 in Section 17941, limited liability partnerships, as defined in
38 Section 17948, charitable organizations, as described in Section
39 23703, regulated investment companies, as defined in Section 851
40 of the Internal Revenue Code, real estate investment trusts, as

1 *defined in Section 856 of the Internal Revenue Code, real estate*
2 *mortgage investment conduits, as defined in Section 860D of the*
3 *Internal Revenue Code, financial asset securitization investment*
4 *trusts, as defined in Section 860L of the Internal Revenue Code,*
5 *and qualified Subchapter S subsidiaries, as defined in Section*
6 *1361(b)(3) of the Internal Revenue Code, to the extent applicable.*

7 *(3) This subdivision shall not apply to any corporation that*
8 *reorganizes solely for the purpose of avoiding payment of its*
9 *minimum franchise tax.*

10 *(g) Notwithstanding subdivision (a), a domestic corporation,*
11 *as defined in Section 167 of the Corporations Code, that files a*
12 *certificate of dissolution in the office of the Secretary of State*
13 *pursuant to subdivision (c) of Section 1905 of the Corporations*
14 *Code, prior to its amendment by the act amending this subdivision,*
15 *and that does not thereafter do business shall not be subject to the*
16 *minimum franchise tax for taxable years beginning on or after the*
17 *date of that filing.*

18 *(h) The minimum franchise tax imposed by paragraph (1) of*
19 *subdivision (d) shall not be increased by the Legislature by more*
20 *than 10 percent during any calendar year.*

21 *SEC. 5. This act provides for a tax levy within the meaning of*
22 *Article IV of the Constitution and shall go into immediate effect.*

23 ~~SECTION 1. It is the intent of the Legislature to enact~~
24 ~~legislation authorizing a credit against the taxes imposed by the~~
25 ~~Personal Income Tax Law for individuals who purchase a~~
26 ~~foreclosed home.~~